

LAFAYETTE CITY-PARISH COUNCIL BRIEFING

705 W. University Ave, Ted A. Ardoin City-Parish Council Auditorium
Tuesday, January 11, 2005

COUNCILMEMBERS: *Present* – Bobby Badeaux-District 1; Dale Bourgeois-District 2; Christopher J. Williams-District 3; Louis C. Benjamin, Jr.-District 4; Lenwood Broussard-District 5; Bruce Conque-District 6; Marc Mouton-District 7; Randy Menard-District 9

Absent: Rob Stevenson-District 8

ADMINISTRATION: L.J. Durel, Jr. (City-Parish President); Dee Stanley (CAO); Pat Ottinger (Legal Counsel); Chief Robert Benoit (Fire)

COUNCIL STAFF: Norma Dugas (Clerk); Veronica Williams (Assistant Clerk); Anne Patin (Sr. Administrative Assistant)

(TAPE 1)(SIDE A)(000) AGENDA ITEM NO. 1: Call to order.

Chair Menard called the Lafayette City-Parish Council Briefing to order.

(TAPE 1)(SIDE A)(011) **ANNOUNCEMENTS:**

- **Councilmember Stevenson was out of town on business and would not be in attendance.**

DISCUSSION

(TAPE 1)(SIDE A)(012) AGENDA ITEM NO. 2: Discuss Ordinance No. O-278-2004, An ordinance of the Lafayette City-Parish Council amending the Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I and by adding Section 42-2 “Smokefree Air”.

Legal Counsel Pat Ottinger was recognized with a presentation detailing specifics of the ordinance and concerning the discussed amendments for O-278-2004. Issues discussed were:

Basic Premise of Ordinance:

- Recognizes and protects the rights of non-smokers in the workplace to be free of exposure to secondhand smoke.
- Does not attempt to deny the right of a smoker to exercise his or her personal choice, but does regulate that right as to locale.
- Places responsibility for compliance on the owner, operator, manager or other person in control of premises, not on the smoker.
- It is recognized that most businesses and workplaces are already “smokefree” by choice or policy of the owner or manager of the business or workplace.

Although the media has reported that there are several “proposed” amendments, in truth, an amendment can only be “proposed” for consideration on the floor of a Council meeting by a Council member. Therefore, the following discussed amendments were presented:

1. As introduced, the ordinance only applies to the City of Lafayette. This discussed amendment would make the ordinance also applicable to the unincorporated areas of Lafayette Parish and encourage the smaller municipalities to adopt a similar ordinance.
2. Addition of a definition for “Common Area” means an area of physical space within an Enclosed Area where Employees or the public at large may congregate or assemble, including reception areas, hallways, kitchens, copy or file rooms, lobbies, conference rooms, auditoriums, classrooms, meeting rooms, elevators, Health Care Facilities, cafeterias, Employee lounges, stairs, and stairwells, restrooms, and all other enclosed facilities.
3. An Employer is permitted to designate, construct or establish a distinct, segregated physical area or space where smoking is permitted within an Enclosed Area, provided that:
 - v the designated area or space is not a Common Area;
 - v it is possible to access all Common Areas without traversing the designated area or space; and
 - v the designated area or space is constructed and/or ventilated so as to preclude the entrance, migration or infiltration of smoke into a non-smoking area.

However, nothing in the Ordinance is intended to:

- v require an Employer to avail itself of this permitted option nor to effect any structural alterations in order to accommodate the preference of any person to smoke or to be free of exposure to smoke; or
 - v confer upon any Employee or other person any right to demand or insist that any Employer must expend any monies to accommodate the personal preference of any Employee or other person.
4. All exempt restaurants are encouraged to construct, establish and maintain a distinct, segregated physical area or space where smoking is permitted within an Enclosed Area, provided that the designated area or space is constructed and/or ventilated so as to preclude the entrance, migration or infiltration of smoke into a non-smoking area.
 5. Delete Section 42-2(d)B and replace with:
 - ❖ Each Employer, owner or manager of a Business where smoking is prohibited shall, within thirty (30) days of the effective date of the Ordinance or of the opening of a Business subsequent to the effective date of the Ordinance, post a sign approved by the Lafayette Fire Department which clearly and conspicuously summarizes the provisions of the Ordinance.
 6. Exclude Non-Governmental Vehicles.
 - ❖ Delete “vehicles” from Section 42-2(a)(9) -- definition of “Place of Employment.”
 - ❖ However, LCG Vehicles are covered by policy.
 - ❖ Also, buses and taxis are covered by Ordinance.
 - *Therefore, under this amendment, PRIVATE VEHICLES -- PERSONAL OR BUSINESS -- would not be regulated by this Ordinance.*
 7. -- Smoking by an Employee, invitee or other person present at or associated with a Business is prohibited within a reasonable distance of twenty-five (25’) feet outside of any entrance to an Enclosed Area where smoking is prohibited, which entrance is available to the general public (or such lesser distance if considerations of safety do not permit a greater distance), so as to ensure that tobacco smoke does not enter or migrate into the Enclosed Area through doors, entrances, windows, ventilation systems or other means.
-- This prohibition shall not apply to any person who merely traverses near a place where smoking is prohibited if that person is not an Employee, invitee or other person present at or associated with such Business.
 8. Suspension or revocation of permit or license cannot be imposed unless and until:
 - ❖ Owner given written notice of repeated violations of Ordinance as determined by the Enforcement Officer.
 - ❖ Owner fails to adopt and implement a written policy to address the violations within 30 days of receipt of such notice.
 - ❖ Policy to be submitted to and approved by the Enforcement Officer.
 - ❖ Good faith attempt to comply with approved policy is a defense to suspension or revocation.

A person aggrieved by a suspension or revocation has a right of appeal to the Council (in the same manner and following the same procedure as suspension or revocation of a liquor license).
 9. Immediate Action for Public Safety
-- In the interest of public safety, Enforcement Officer has discretion to take immediate action to enforce the Ordinance in case of refusal by an owner to address violations witnessed by Enforcement Officer.
-- This authority may only be exercised in cases where the owner refuses to comply with lawful orders of the Enforcement Officer and the Enforcement Officer believes that harm to the public might arise without immediate action.
 10. -- No criminal offense for the violation of this Ordinance shall be imposed or enforced prior to the ninetieth day after the effective date of the Ordinance.
-- Purpose would be to allow a period of time for transition to the requirements of the Ordinance.

What is Covered:

- Smoking shall be prohibited in all *enclosed* Public Places within the City of Lafayette.
- “Public Place” is defined as “an Enclosed Area to which the public is invited or in which the public is permitted.”
- Examples listed in the Ordinance include:
 - ❖ Banks;
 - ❖ Educational facilities;
 - ❖ Health Care Facilities;
 - ❖ Laundromats;
 - ❖ Public transportation facilities;
 - ❖ Reception areas;

- ❖ Retail food production and marketing establishments;
- ❖ Retail service establishments and retail stores;
- ❖ Shopping Malls;
- ❖ Sports Arenas, theaters, and waiting rooms.
- A private residence is not a “Public Place” unless it is used as a licensed child care, adult day care, or Health Care Facility.

Exceptions to Applicability (exempt by State law):

- Gaming Operations.
 - ❖ None in Lafayette Parish.
- Hotel Guest rooms.
- Expanded Service Restaurants, Bars or Alcoholic Beverage Establishments or Facilities.
 - ❖ Defined as having a liquor license.
- Tobacco Stores.
- Private residences.
 - ❖ Except when used as a licensed child care, adult day care, or Health Care Facility.
- Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons:
 - ❖ All of whom are smokers, and
 - ❖ Who have requested in writing to be placed in a room where smoking is permitted.
- Outdoor areas of Places of Employment.
 - ❖ Except as covered by the so-called 25’ Rule.

What is needed:

1. Public Education
 - The Enforcement Officer shall engage in a continuing program to explain and clarify the purposes and requirements of the Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it.
 - The program may include publication of a brochure for affected Businesses and individuals explaining the provisions of the Ordinance.
 - ❖ Section 42-2(n).
2. Encouragement
 - The Lafayette City-Parish President shall annually request other governmental and educational agencies having facilities within the City of Lafayette to establish local operating procedures in cooperation and compliance with the Ordinance.
 - This includes encouraging all Federal, State, City and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.
 - ❖ Section 42-2(o).
 - The LCG encourages the respective governing authorities of the other incorporated municipalities in the Parish of Lafayette to adopt similar ordinances in their respective areas.
 - ❖ Section 5 of Ordinance.

The Chair then opened discussion for the Council. There being no discussion, the Chair took comments from the public.

(TAPE 1)(SIDE A)(564) COMMENTS FROM THE PUBLIC

The following individuals signed in but did not wish to address the Council (this list does not indicate whether the individual was for or against the ordinance):

Cathryn Wright	Betty Landreneau	Marilyn Buford
Rose Cormier	Michelle LeDoux	Sally Granger
Don Lobb	Judy Lobb	Alison Leger
Jayne Ryder	Tonya Ramsey	Claude St. Julien
Mary Duhon	Sherry Flood	Rochanne George
Jane Adkins	Marla Meyer	Marliese Thomas
Heather Morris	Dorothy Carnal	Micheal Morris
Amber Lehmann	Sue Candler	Betty Tucker
Dillon Porter	Sandra Porter	Amy Fuselier
Liza Granger	Dawne Arnold	Joi Cangelosi
Lisa Morrow	Ric Vicks	Karla Meche
Jill Laroussini		

(TAPE 1)(SIDE A)(600) The following individuals were recognized to address the Council:

Dewitt Villejoin, retiree from the Louisiana Health Department, stated he did not have any resentment towards an individual's life style as long as that style of living did not interfere with his health.

Jonathan Joubert, a non-smoker, felt this ordinance was fascism. He stated that when one encroaches on another person's freedom and personal responsibility, we are no longer in republic.

Michelle Devall, registered nurse and asthmatic, spoke for the ordinance saying that smoking is a choice, breathing is not. She urged the Council to make Lafayette the first in this health issue.

(TAPE 1)(SIDE B)(000)

Charles Ziegler, a non-smoker, spoke for the ordinance but felt the ordinance was too complicated. He requested that the Council scrap the ordinance and start over.

Doug Hale stated he felt the prohibition of smoking in the workplace should be left to the employer. He listed several other areas of the ordinance that he disagreed with.

Myrtline Thibodeaux opposed the ordinance stating that he was very disappointed by what was happening. He did not want government telling him what to do.

Michael Thibodeaux opposed the ordinance stating he did not disagree that smoking is a health problem. He was concerned about a business owner being penalized.

Charles Brown, Jr. M.D., Chairman of Campaign for Tobacco-Free Living, supported the ordinance. He stated that their purpose was to improve the situation in the State of Louisiana in terms of health care costs associated with tobacco. He stated cigarettes are addictive, they produce cancer and they produce death.

Jimmy Theaux opposed the ordinance stating that the Council can regulate public buildings but not private enterprise. He urged the defeat of this ordinance.

Mr. Theaux asked for more time to speak. A motion was offered by Mouton with no second. The motion failed.

Cecil Theaux opposed the ordinance stating the ordinance is not fair to everyone and is very biased.

Bob Sides addressed the Council regarding secondhand smoke. He stated that three years ago, upon having bi-pass surgery, the doctor asked him how long he had been smoking. He told the doctor he had never smoked. He felt that having parents who smoked and military buddies who smoked contributed to the present condition of his lungs. Recently, the doctors have told him that any contact with smoke should be avoided by leaving the area where there is a smoker.

A motion was offered by Mouton, seconded by Bourgeois, to allow Mr. Sides to speak longer, and the vote was as follows:

YEAS: Badeaux, Bourgeois, Williams, Benjamin, Broussard, Conque, Mouton, Menard

NAYS: None

ABSENT: Stevenson

ABSTAIN: None

Motion was unanimously approved.

Sides further stated that it is up to us, as individuals, to decide whether we want to go where there is smoking or not. He urged defeat of the ordinance.

Sam Walker stated he felt this ordinance was about continuous control of people. He said the signs "Thank You For Not Smoking" were adequate. He urged defeat of the ordinance.

Dr. John Rainy, Louisiana Oncology Associates, supported the ordinance. He stated that an individual needs food, water and air to live. Food and water are regulated. This ordinance is not about regulating someone's ability to smoke, this issue is about regulating that effect on other individuals who will eventually potentially get sick. He further stated that it would take 40 years, if everyone stopped smoking today, for him to go out of business. He sees the damage of smoking everyday in his practice.

Martha Grant reminded the Council that in February, 2003, the Council passed a resolution that would return control to local governments for clean indoor air. The resolution was taken to Baton Rouge, along with others, and because of that, Act 515, which gives local government the

authority to pass a Clean Indoor Air or a Smokefree Ordinance. This ordinance is the most comprehensive ordinance that can be offered this community to protect them from the dangers of secondhand smoke.

Mary Neiheisel presented a brief history of tobacco and stated in 1964, the Surgeon General advocated “Smokefree America”. She felt this ordinance was a step in the right direction. She further stated that not only is it a health hazard, it has a large fiscal impact given the cost to the consumer and insurance companies.

A motion was offered by Mouton, seconded by Bourgeois, to allow Ms. Neiheisel to speak longer, and the vote was as follows:

YEAS: Badeaux, Bourgeois, Williams, Benjamin, Broussard, Conque, Mouton, Menard

NAYS: None

ABSENT: Stevenson

ABSTAIN: None

Motion was unanimously approved.

She continued by asking if Louisiana was going to be the last state to regulate secondhand smoke. Control and regulation is needed.

Jennifer Burris, Tobacco Control Coordinator with Southwest Louisiana Area Health Education Center, requested the Council to support the Smokefree Ordinance to create a smokefree indoor air environment for the people who live, work, play and spend their money in Lafayette.

Baleigh Townsend, a 5th grader from Youngsville Middle School and on behalf of children in Lafayette, urged the Council to support this ordinance.

Ginger Breaux, a breast cancer survivor, urged the Council to support this ordinance.

Pat Miller, a registered nurse, urged the Council to remember that our rights, when someone smokes, are being violated. She reminded the Council that it’s not a choice to breathe, but it’s a choice to smoke.

Barbara Danner stated that she was 67 years old and a smoker. Her parents were smokers and lived to be in their 80’s. She then relayed several personal experiences as a smoker.

A motion was offered by Mouton, seconded by Bourgeois, to allow Ms. Danner to speak longer, and the vote was as follows:

YEAS: Badeaux, Bourgeois, Williams, Benjamin, Broussard, Conque, Mouton, Menard

NAYS: None

ABSENT: Stevenson

ABSTAIN: None

Motion was unanimously approved.

She urged the Council to think about what they are doing to everybody because everybody is not a non-smoker.

(TAPE 2)(SIDE A)(000)

Delia Gerard, a smoker, urged the Council to grant her her rights as a smoker.

Vicci Guillet, a breast cancer survivor, agreed that everyone has rights but sometimes there has to be something in place because not everyone respects her right.

Lewis Kellogg, having listed the longevity of several family members, argued that the ordinance was not necessary. He urged defeat of the ordinance.

Lisa Burns, Regional Director of the American Heart Association, stated that the Association encourages people to change poor diet, inactivity, high blood pressure, high cholesterol, diabetes and smoking. The first five, you put in your body. The sixth one, you can put in your body or someone else can put it near your body if you chose not to smoke.

Annie Tu stated that there is asthma in her family and her 6 year-old son has a trache. It is extremely important that individuals stay at least 25 feet from them when they smoke.

Yenter Tu stated that the office staff of Village DuLac were heavy smokers. He further stated that this ordinance may not pass but you need to be fair.

Wallace Senegal stated he did not have a problem with the ordinance except for government banning smoking in private businesses. They should have a choice.

Ellen Landreneau, a registered nurse, stated that passive smoke triggers the craving for smoke. A person with cancer, who is trying to quit smoking, is fighting a really tough battle. She urged the Council to consider the sick and elderly who don't have control over where they must live and the children who are powerless to say which facility they go to and think of her (with a paralyzed vocal cord). She then suggested that if the ordinance does not pass, a "Smoking Allowed Here" sign be placed in restaurants because if she saw that, she would not go in.

Kolleen Verlander stated that, as a business owner, she is concerned about the restrictions. She urged the Council to table this ordinance. She suggested the Council meet with some of the speakers and create an ordinance that can help.

ADJOURNMENT

(TAPE 2)(SIDE A)(343) There being no further business to come before the Council, Chair Menard declared the Council Briefing adjourned.

NORMA A. DUGAS, CLERK
LAFAYETTE CITY-PARISH COUNCIL